

Sadra Vs. State of Rajasthan

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Court : Rajasthan

Decided On : May-15-1984

Reported in : 1984WLN(UC)88

Judge : S.S. Byas, J.

Appeal No. : S.B. Criminal Revision No. 332 of 1978

Appellant : Sadra

Respondent : State of Rajasthan

Disposition : Petition allowed

Judgement :

S.S. Byas, J.

1. Accused Sadra was convicted under Section 7/16 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as 'the Act') and was sentenced to six months rigorous imprisonment with a fine of Rs. 1000/-, in default of the payment of fine to further undergo one month's simple imprisonment by the learned Chief Judicial Magistrate, Sirohi vide judgment dated August 19, 1977. The accused went in appeal which was heard by the learned Additional Session Judge, Sirohi. In appeal, the conviction and sentence of the accused were maintained. The accused has now come up in revision.

2. Briefly stated, the prosecution case is that the accused was found selling milk in the town of Sirohi on July 26, 1975 by the Food Inspector Shiv Shanker. He suspected the milk to be adulterated. He disclosed his identity to the accused and purchased 660 ml of milk from him after making a payment of 0.70 paise in cash as its price. The milk was divided in three equal parts and each part was filled in a phial. One of the samples was sent for analysis to the Public Analyst, Jodhpur. The sample milk was found adulterated as it did not conform to the prescribed standard of purity. On the receipt of the report from the Public Analyst, the Food Inspector submitted the papers to the Municipal Board, Sirohi to seek written consent to launch prosecution against the accused. Thereafter the complaint was filed. This led to the prosecution and conviction of the accused, as mentioned at the very outset.

3. At threshold of his argument, the learned Counsel for the accused-petitioner vehemently contended that the prosecution and conviction of the accused are wholly bad and unsustainable in law. It was argued that the Municipal Board gave the written consent to the Food Inspector to launch the complaint but the complaint was not filed by him. It was filed by somebody else other than the Food Inspector, to whom the written consent to file the complaint was not accorded by the Municipal Board under Section 20 of the Act. As such the whole trial stands vitiated. Reliance in support of the contention was placed on Section 20 of the Act and on two decisions of this Court (1) State v. Jainurain 1983 Cr.L.R. (S.C. & Raj.) 459 and (2) Nagji Ram v. State of Rajasthan 1983 Cr.L.R. (S.C. & Raj.) 666. In reply it was contended by the learned Public Prosecutor that objection as to the maintainability of the complaint on the ground raised in this Court was not taken by the accused in the courts below. As such the objection should not be entertained now at this stage. As regards the two authorities cited above, the learned Public Prosecutor had to submit that in case his aforesaid objection is not accepted, the present case is covered by the aforesaid authorities.

4. I have taken the respective submissions into consideration. Admittedly, the written consent to launch prosecution and file the complaint was accorded by the Municipal Board to the Food Inspector vide Ex. P 6. A perusal of the case file shows that the complaint was filed not by the Food Inspector but by somebody

else probably the Assistant Public Prosecutor in the trial Court. Section 20 of the Act speaks of the persons or authorities who can initiate prosecution. They are - (1) the Central Government, (2) the State Government, (3) a person with the written consent of the Central Government, or the State Government, (4) a person authorised in this behalf by the Central Government or the State Government and (5) purchaser referred to in Section 12 of the Act. No person or Authority other than those referred to above can file a complaint under the Act. If a complaint is filed by any person other than specified above the prosecution would be void ab initio. Where the complaint is filed by an unauthorized person, the Court has no jurisdiction to take cognizance thereon. Since the APP was not the person or authority to whom the written consent to launch the complaint was given, he had no powers to present the complaint. A similar view was taken by this Court in the two decisions referred to above.

5. I find no merit in the contention of the learned Public Prosecutor that the accused is estopped from challenging the illegality of the prosecution simply on the ground that he did not raise the objection which he is taking now in the appeal. There is nothing like estoppel in law which may preclude the accused from challenging the illegality or invalidity of the prosecution.

6. Since the complaint was filed by a person not authorised under Section 20 of the Act, the prosecution and trial of the accused stand illegal ab initio.

7. In the result, the revision-petition of accused Sadra is allowed. The judgments of the Courts below are set-aside and the conviction and sentence of the accused under Section 7/16 of the Prevention of Food Adulteration Act, 1954 are set-aside. He is already on bail and need not surrender. His bail bonds shall stand cancelled.